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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/688,733   | 10/15/2003  | Robert Grzesek       | MAT 314             | 1775             |
| 7590<br>Konstantine Diamond, Esq.<br>Mattel Inc.<br>333 Continental Boulevard<br>Mail Stop M1 - 1518<br>El Segundo, CA 90245 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| HYLINSKI, ALYSSA MARIE   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 3711   |             |                      |                     |                  |
| MAIL DATE  |             | DELIVERY MODE        |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/688,733

**Applicant(s)**

GRZESEK ET AL.

**Examiner**

Alyssa M. Hylinski

**Art Unit**

3711

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 50-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CS-100)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 2/1/08

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 50-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesse (4919639), Hanazato (4466215) and Staeblein (DE20201310). Hesse discloses a vehicle body or first component (Fig. 5) with a receiving alignment member in the form of an aperture (30), a chassis or second component (Fig. 2) connectable to the vehicle body (Fig. 1) and a cockpit or third component (Fig. 4) disposed between the chassis and the vehicle body (Fig. 1) having a outwardly extending alignment member in the form of a post or pin (29) to cooperate with and be received within the receiving alignment aperture member of the vehicle body so as to align the elements (Fig. 1). The device also includes first and second components with rotatable elements in the form of wheels (2,3) attached thereto (column 3 lines 25-30 and column 3 line 67 – column 4 line 3). The first and second rotating components are coupled to the vehicle between the chassis and the cockpit (Fig. 1) by means of pedestals or base members (8,13) in which the components are retained (Figs. 1, 2 & 4). The pedestals take the form of first and second support plates (8) for supporting the first rotatable element and third and fourth support plates (13) for supporting the second rotatable element (Figs. 1 & 4). The plates contain grooves (7', 14) that are configured to receive the rotating

elements therein (Figs. 1 & 4). The chassis further includes first and second recesses (9,10) that align and mate with the support plates (Figs. 1 & 2). In regard to the cockpit having the receiving member and the vehicle body having the outwardly extending member, the examiner notes that such a modification would have involved a mere rearrangement of parts. A rearrangement of parts is generally recognized as being within the level of ordinary skill in the art. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Hanazato discloses a toy vehicle having a vehicle body and a chassis with first and second components (Fig. 5) wherein each of the components includes an axle (17, 19) with wheels coupled to each end thereof (Fig. 5). It would have been obvious to one of ordinary skill in the art to replace the first and second rotating elements of Hesse with the axle and wheel elements of Hanazato for the predictable result of attaching wheels to a chassis. Hesse and Hanazato disclose the basic inventive concept, substantially as claimed with the exception of the cockpit including first and second magnets coupled to the pedestals for attaching the first and second components, respectfully. Staeblein discloses a toy vehicle that utilizes magnets to help attach the wheel elements thereto (abstract). It would have been obvious to one of ordinary skill in the art from the teaching of Staeblein to couple the first and second components using magnets associated with the pedestals in order to easily assemble and detach the device without tools. Furthermore, since all the component parts are known, the only difference is the combination of the "old elements" into a single device by mounting magnets on the cockpit between the plates. Thus, it would have been obvious to one having ordinary skill in the art to mount magnets to the cockpit of Hesse,

since the operation of the magnets is in no way dependent on the operation of the other elements and the magnets could be used in combination with the device in order to achieve the predictable result of securely retaining the necessary elements in place.

3. Claims 59-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesse, Hanazato and Staebelin as discussed above and further in view of Salosky (2803920). Hesse, Hanazato and Staebelin disclose the basic inventive concept, substantially as claimed, with the exception of using a plurality of magnets to couple the cockpit to the chassis. Salosky discloses a toy vehicle in which the components are held together by magnets (page 1 columns 1-2). It would have been obvious to one of ordinary skill in the art from the teaching of Salosky to attach components of a toy vehicle by magnets in order to securely attach toy components together in an easily releasable manner. Furthermore, the reference discloses the use of magnets as a connecting means to be an art-recognized equivalent at the time of invention and as such it would have been obvious to couple the chassis and cockpit in this manner so as to achieve the predictable result of attached components.

4. Claims 66-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesse, Hanazato and Staebelin. The references disclose the basic inventive concept as described above, substantially as claimed, with the exception of the chassis including first and second magnets that cooperate with the third and fourth magnets of the cockpit, respectively, when disposed proximate to each other. It would have been obvious to one of ordinary skill in the art to add first and second magnets to the recesses of the chassis member so as to help retain the axle members between the

Art Unit: 3711

cooperating magnets since it has been held that a mere duplication of parts that does not produce a new and unexpected result cannot patentably distinguish over the prior art. *See in re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In this case, the individual magnets and the dual sets of magnets are both being used to retain the axle in a desired configuration.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 50-69 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH

/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711